IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5180 OF 1996

Shri Devraj Chandrabali Rai
Shankar Wadi, Parsi Chawl,
Room No.3, Jogeshwari (East)
Mumbai - 400 060 ... Petitioner

V/s.

1. The National Textile Corporation
(S.M.) Ltd. Unit
The Gold Mohur Mills Ltd.
Dadasaheb Phalke Road, Dadar
Mumbai - 400 014

2. Shri V.L. Kamble
Member
Industrial Court, Aurn Chambers
Tardeo, Mumbai - 400 034 ... Respondents

Mr.S.M. Dharap for Petitioner
Mrs.Meena H. Doshi for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **JULY 15, 2004**
JUDGMENT PRONOUNCED ON: **AUGUST 18, 2004**

JUDGMENT:

. By this Petition, the order of the Industrial Court in appeal has been challenged by the Petitioner. The Labour Court in an application filed by the Petitioner under section 78 of the Bombay Industrial Relations Act (for short, 'BIR Act') has held that the Petitioner was entitled to reinstatement with continuity of service and full backwages from 20.3.1980. The Industrial Court while exercising its jurisdiction under section 84 of Act has set aside the order of the Labour Court and dismissed the application filed by the

Petitioner under section 78 of the BIR Act.

2. The Petitioner was employed with Gold Mohur Mills Limited which has been taken over by Respondent No.1, that is, National Textile Corporation (S.M.) Limited pursuant to the Sick Textile Undertakings (Taking Over of Management) Ordinance of 1983. He was in employment of the Blow Room Department as a permanent employee and had worked there for about 10 years when he was issued a chargesheet on 21.7.1979. It was alleged in the chargesheet that the Petitioner had alongwith two other workmen assaulted one of their co-employees in the blow-room department. The injured employee was sent to hospital for treatment. The Petitioner, it was alleged, had committed a misconduct under Standing Order 21(K) of the Standing Orders applicable to the Textile Industry. The explanation submitted by the Petitioner was not accepted by the Mill and an enquiry was instituted against him. The enquiry officer held that the Petitioner was not guilty of the charges levelled against him. It is the case of the Petitioner that the enquiry officer had earlier held that he was not guilty of the misconduct levelled against him but thereafter on account of the pressure brought about by the representative union the enquiry officer changed his stance and found the Petitioner guilty of the misconduct for assault, etc. The Petitioner’s services were

therefore, terminated on 23.9.1980. After the approach sent to the Mill by the workman was negatived, the Petitioner filed an application under section 78 of the BIR Act. It was contended by the Petitioner that the enquiry held against him was not valid and that the findings were perverse. The respondent in its written statement contended that the assault on the workman, Baijnath had resulted in a police complaint being lodged and a criminal case being registered against the Petitioner and his co-workman. The respondent denied that the enquiry officer had not conducted a proper enquiry and that his findings were perverse.

3. The Labour Court on an assessment of the enquiry proceedings held that the enquiry conducted was fair and proper but that the punishment imposed of dismissal was shockingly disproportionate. The Labour Court was of the view that although the findings of the enquiry were not perverse they were not substantiated by the evidence on record and that the termination of service was not legal and proper. Accordingly, the Labour Court awarded reinstatement with continuity of service and full backwages to the Petitioner.

4. The criminal case registered against the Petitioner under section 323 r/w 34 of the Indian Penal Code was proceeded with during the pendency of the

enquiry. This resulted in acquittal of the Petitioner and the order was produced by the Petitioner before the enquiry officer.

5. The respondent being aggrieved by the order of the Labour Court filed an appeal before the Industrial Court contending that the Labour Court had exceeded its jurisdiction by granting reinstatement with continuity of service and full backwages to the Petitioner. The Industrial Court held that the Labour Court had erred in awarding reinstatement with continuity of service and full backwages since there was an assault which had been occasioned by the overt act of the Petitioner. The Industrial Court set aside the order of the Labour Court and dismissed the complaint. This order of the Industrial Court has been impugned in the present petition.

6. Mr.Dharap, learned Counsel for the Petitioner, submits that the appeal being barred by limitation ought not to have been entertained by the Industrial Court who should have rejected the same. He submits that the power of the appellate Court is circumscribed and there is no power granted to the Industrial Court to condone delay and in any event such a power cannot be exercised suo motu without there being any application for condoning the delay on record. The learned Advocate

then submits that the Labour Court had acted well within its jurisdiction and decided that although the findings of the enquiry officer are not perverse the enquiry officer did not have sufficient evidence before him to arrive at a conclusion that the petitioner was guilty of the misconduct alleged against him. The learned Advocate then urged that if the findings are not perverse but are not SUBSTANTIATED by evidence and material on record, the employer need not be given an opportunity to lead further evidence. He then urged that although the findings of the enquiry officer are not perverse as recorded by the Labour Court they need not be binding on the Labour Court and it was always open for the Labour Court to take a different view in the matter. He submits that the powers of the Labour Court under section 78 of the BIR Act are akin to the powers of the Labour Court acting under section 11A of the Industrial Disputes Act. Besides this, the learned Advocate submits that the Labour Court being the first Court to judicially scrutinise the action of the employer, it can always arrive at a conclusion different from that of the enquiry officer although the findings of the enquiry officer may not be perverse.

7. The learned Advocate places reliance on the judgment in the case of *Babulal Nagar & Ors. v/s. Shree Synthetics Ltd. & Ors.,* **1984 (Sup.) SCC 128** to

submit that the Labour Court can always decide the legality and propriety of an order passed under the standing orders as section 78 empowers the Labour Court to do so. The learned Advocate then submits that the appellate power to be exercised must be limited only to ascertain the legality of the order of the Labour Court and that the appeal Court cannot substitute its own findings for those of the Labour Court.

8. Mrs.Doshi, learned Counsel appearing for Respondent No.1, submits that no fault can be found with the order of the Industrial Court in appeal as it has exercised its jurisdiction fairly and in just manner. She submits that the Labour Court was wrong in concluding that the findings of the Enquiry Officer were not perverse but improper and therefore, there was no need to permit the employer to lead evidence in Court to substantiate the charges levelled against the workman. She places reliance on the judgment of Division Bench of this Court in *Zandu Pharmaceuticals Works Ltd. v/s. Dayanand Sitaldin Mishra & Anr.,* **1992 I CLR 634** where this Court has taken a view that there is a hairline distinction between the findings of the Enquiry Officer being improper and the findings being perverse. She submits that the Labour Court ought not to have considered whether there was sufficient evidence on record before the enquiry officer for him to arrive at a

conclusion that the petitioner was guilty of misconduct since the Labour Court was only required to ascertain whether the findings were perverse. If the findings of the enquiry officer were in fact perverse the Labour Court was bound to allow the employer to establish the case against the workman by leading evidence in the Court. The learned Advocate relies on the judgment in the case of *Municipal Corporation of Greater Bombay v/s. S.E. Phadtare,* **1994 II LLN 305** to submit that the powers under section 11A of the Industrial Disputes Act are not analogous to the powers of the Labour Court under section 78(1)(A)(a)(i), under which the present application has been filed. She submits that the powers to reappreciate evidence is only under section 78(1)(D)(iii) and not under section 78(1)(A). According to the learned Advocate, if the Labour Court finds that there are contradictions in the order of the enquiry officer or that the findings are not substantiated by the evidence on record, it would amount to a perverse finding which would necessitate the Labour Court to permit the employer to lead evidence before it. On the question of delay, the learned Advocate Mrs.Doshi for the Respondent submits that there has been no delay in preferring the Appeal and therefore, there was no need to file an application for condoning the delay. She submits that the Rule of practice and procedure of the Labour Court do not require such an application.

Furthermore, according to the learned Advocate, the appeal was filed immediately after the respondent obtained a certified copy of the order of the Labour Court. She submits that the order of the Labour Court is dated 26.8.1988 and the appeal was filed by the respondent immediately on receiving the certified copy

of the order on 18.10.1988. The appeal was filed on 17.1.1988 which is within 30 days of the respondent obtaining the certified copy of the order. She relies on the judgment of the learned Single Judge of this Court in the case of *Kalappa Narsappa Sangle v/s. Shri Panchaganga Sahakari Sakhar Karkhana & Anr.,* **1996 II LLJ 19** where this Court has held that period of limitation starts to run from the date of receipt of certified copy of the order of the Labour Court.

9. Several other judgments have been cited by the learned Advocate for Respondent No.1 in support of her submissions including *E.Merck (India) Limited, Bombay v/s. V.N. Parulekar & Ors.,* **1991 II CLR 73**, *Bhavani Metal Works v/s. pandurang R. Sawant & Ors.*, **1991 I CLR 147**; *Hindustan Petroleum Corporation Ltd. v/s. Habib Bismillah Khan & anr.*, **2001 II CLR 871;** *Union of India v/s. K. Subramanium Ex.J.C.*, **2001 II CLR 883;** *S.K. Awasthy v/s. Mr.Bhope & Ors.,* **1994 I CLR 254;** *Hindustan Petroleum Corporation Ltd. v/s. Pratap*

Vishnu Dhuri & Ors., **2001 III CLR 335;** *Janata Bazar v/s. Secretary, Sahakari Nankarara Sangh & Ors,* **(2000) 7 SCC 517**; *UP State Transport Corp v/s. Mohanlal Gupta & Ors.*, **2001 LIC 2122;** *Senior Superintendent of Post Office, Pathanamthitta & Ors. v/s. A. Gopalan,* **1999 I LLJ 191** and *Workmen of Firestone v/s. Management & Ors.* **AIR 1973 SC 1227.**

10. The Labour Court has framed the following issues:

(1) Whether the enquiry held against the applicant is fair and proper?

(2) If yes, whether the punishment inflicted is shockingly disproportionate?

(3) If the enquiry is held to be vitiated on any ground including perversity of findings, whether the opponent has proved the misconduct by leading independent evidence?

(4) Whether the order of termination is legal and proper?

(5) What relief, if any?

(6) What order?

Issue Nos.1 and 2 are answered in the affirmative and Issue No.4 in the negative. Issue Nos.3 has been answered thus:

"Not perverse but not substantive by evidence on

record"

While dealing with Issue No.3, the Labour Court has held that the evidence indicates that the workman who was assaulted was bleeding from the mouth and the nose and that the evidence recorded before the Enquiry Officer was sufficient to establish the fact that Baijnath Brijlal had sustained the injuries when he was working in the Blowroom and he was treated in the hospital. However, according to the Labour court although the incident had been proved there was insufficient evidence to establish that it was the Petitioner who had assaulted the workman. Accordingly, the Labour Court held that the enquiry officer’s findings are not perverse as they were based on the evidence on record. However, certain other facts were not taken into consideration by the Enquiry Officer and therefore, his findings were not substantiated by the evidence on record. The Labour Court then came to the conclusion that although the injuries on Baijath were proved, the nature of injuries were different from those described by the witnesses and recorded by the Enquiry Officer. The Labour Court also held that there was no need to give any opportunity to the employer to adduce evidence afresh to prove the charges levelled against the workman as the findings were not perverse but were not substantiated by the evidence on record.

11. The Industrial Court has observed that this finding of the Labour Court that there was no reason to give any opportunity to the employer to lead evidence afresh was erroneous. According to the Industrial Court, the absence of evidence was not the same as absence of reliable evidence. The Industrial Court in paragraph 7 of its judgment has observed thus:

> 7. ....The two are quite distinct, and the distinction has to be kept in mind, that makes a finding perverse is absence of legal evidence. A wrong finding is not necessarily a perverse finding and hence a finding cannot be said to be perverse merely because it is possible to take a different view on the same evidence. If the enquiry is properly held the departmental authorities are the sole Judges of facts, and in case is some legal evidence, then its adequacy or reliability cannot be canvassed. What is only to be seen is whether there is legal evidence or not. Possibility of a Tribunal arriving at a different conclusion will not make a finding 'perverse'. A tribunal is not called upon to decide whether is it's opinion the evidence is true, but is has only to see whether the employer has acted reasonably. To examine sufficiency of evidence will not help in arriving at finding of perversity. What is material is the existence of legal evidence. The evidence may be unsatisfactory and the decision may appear to be doubtful because the appreciation and analysis of the evidence may not be proper. The question to be seen is taking the evidence as a whole whether it is reasonably possible to record the finding that the alleged misconduct is established.

12. Therefore, the Industrial Court held that the Labour Court should have permitted the employer to lead evidence afresh to establish the charges against the Petitioner and that by depriving this opportunity, the

respondent has been denied justice.

13. In the case of *Babulal Nagar (Supra),* the Apex Court considered the provisions of Madhya Pradesh Industrial Relations Act, 1960 and the scope of the revisionary jurisdiction of the Industrial Court under that Act. The Apex Court while examining the scope was of the view that section 61(1) of that Act was *paramateria* with section 78 of the BIR Act. Section 61 of the M.P. Industrial Relations Act prescribes the powers of the Labour court which inter alia include the power to decide the propriety or legality of an order. This provision is, as observed by the Supreme Court, *paramateria* with section 78(1)(A)(a)(i) of the BIR Act. While considering the scope of the term "propriety", the Supreme Court has observed thus:

> 14. .. When jurisdiction is conferred upon the Labour Court, not only to examine the legality of the order as also the propriety of the order, the Labour Court can in exercise of the jurisdiction examine the propriety or impropriety of the order. The expression 'propriety' is variously understood, one meaning assigned to it being 'justice' is *Legal Thesauras* by Burton at page 902. Amongst various shades of meaning assigned to the expression, the *Oxford English Dictionary*, Vol. VIII, page 1484 sets out "fitness; appropriateness; aptitude; suitability; appropriateness to the circumstances or conditions, conformity with requirement; rule or principle, rightness, correctness, justness, etc". If therefore, the justice or the justness in relation to a legal proceeding where evidence is led is questioned and the authority is conferred with jurisdiction to examine the

propriety of the order or decision that authority will have the same jurisdiction as the original authority to come to a different conclusion on the same set of facts. If any other view if taken the expression 'propriety' would lose all significance. The expression 'legality and propriety' has been used in various statutes where appellate or revisional jurisdiction is conferred upon a superior authority. In Raman and Raman Ltd. v. STate of Madras, while examing the ambit of the jurisdiction of the State Government under Section 64-A of the Motor Vehicles Act, 1939 as amended by the Motor Vehicles (Madras) Amendment Act, 1948 to interfere with the orders of subordinate Regional Transport Authority on the ground of propriety, this Court observed as under:

. The word "propriety" has nowhere been defined in the Act and is capable of a variety of meanings. In the Oxford English Dictionary (Vol. VIII), it has been stated to mean "fitness: appropriatenss; aptitude; suitability; appropriateness to the circumstances or conditions; conformity with requirement, rule or principle; rightness, correctness, justness, accuracy". If the State government was of the opinion that respondent 2 had better facilities for operation than the appellant and their service to the public would be more beneficial, it could not be said that the State Government was in error in thinking that the order of the Board confirming the order of the Regional Transport Authority was improper.

In *Moti Ram v. Suraj Bhan* while examining the scope and ambit of jurisdiction of the High Court under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, this Court observed as under:

. Under Section 15(5) the High Court has jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the propriety or the legality of the finding made by the authorities in the present case about the requirement of the landlord under Section 13(3)(a)(iii).

After referring to these two decisions, in Ching Chong Sine v. Puttay Gowder, Alagiriswami, J.

> held that the court exercising revisional jurisdiction to decide the legality or propriety of an order has the power to come to a conclusion different from that arrived by the subordinate court on the same set of circumstances. In Ahmedabad Sarangpur Mills Company Ltd. v/s. Industrial Court, Ahmedabad a Division Bench of the Gujarat High Court held that the expression 'legality and propriety' in Section 78(1) of the Bombay Industrial Relations Act does not limit the jurisdiction of the Labour Court to come to an entirely different conclusion on the same set of facts. This view was followed by another Division Bench of the Gujarat High Court in *Manekchowk and Ahmedabad Manufacturing Company Ltd. v. Industrial Court.* In *Vithoba Maruti Chavan v. S.Taki Bilgrami, Member, Industrial Court, Bombay,* a Division Bench of the Bombay High Court held that the power to decide 'propriety and legality' of the order made under standing order does not confer a mere revisional jurisdiction but a wider jurisdiction which will enable the Labour Court to set aside the order of the employer depending upon the facts and circumstances of the case.

The Supreme Court then observed thus:

> 15. ... Therefore, it appears well-established that the Labour Court having jurisdiction to examine the legality and propriety of the order made by the employer under the standing order will have jurisdiction to examine the propriety of the order which will permit it to come to a conclusion different from the one to which the employer arrived at. Such being the amplitude of the jurisdiction of the Labour Court if upon a wrong view of ambit of its jurisdiction Labour Court approaches the matter as if it exercises narrow revisional jurisdiction, the Industrial Court in revision can interfere on the ground of failure to exercise jurisdiction vested in the Labour Court or material irregularity in exercise of its jurisdiction.

Obviously, therefore, the Labour Court is not bound to accept the findings of the enquiry officer and section

78(1)(A)(a)(i) of the BIR Act empowers it to consider not only the legality of an order but the propriety of such an order. Therefore, it is not necessary that the Labour Court must accept the order if the findings of the Enquiry Officer are not perverse. The Labour Court can always take a different view of the matter and come to its own conclusion based on the evidence led before the Enquiry Officer and other material before the Enquiry Officer. It is only then that the Labour Court would be giving effect to the word "propriety" contained in the section.

14. The submission of the learned Counsel for the Respondent is that the Labour Court having held that there was no evidence to substantiate the charges against the petitioner ought to have permitted the employer to lead evidence. The findings of the Industrial Court that sufficiency of evidence would not be necessary to be ascertained by the Labour Court cannot be accepted as the Labour Court is empowered to decide the propriety of an order. If an order is perverse, it will not be legal. An order which is not perverse may be legal but could still be an improper order. The Labour Court has been empowered under the section to decide both the legality and propriety of the order. The Division Bench of this Court in the case of *Zandu Pharmaceuticals (supra)* was considering a dispute

raised under the Industrial Disputes Act in respect of termination of services. This Court observed that the Labour Court was of the view that the findings of the Enquiry Officer with regard to one of the charges under the standing orders was perverse. The Labour Court had found that the findings in respect of another charge were improper and not perverse. This Court has taken note of the dictionary meaning of the word 'perverse'. According to the Division Bench of this Court, the dictionary meaning indicate that in the absence of evidence, the findings of the Enquiry Officer could be termed only as perverse and the Labour Court was wrong in coming to the conclusion that the findings of the Enquiry Officer with regard to one of the standing orders was not perverse but was improper. The Court observed thus:

> 4. In view of the facts of the present case, we do not agree with the learned Single Judge that the Judgment of this Court in the case of M/s.Fida Films (supra), is applicable to the present case. In any event, without going into the judgment of this Court in the case of M/s.Fida Films and in view of the facts mentioned above, the appellant company was entitled to lead evidence with regard to the alleged misconduct under both the above mentioned Standing Orders 23(m) and 23(q). As a matter of caution, we may state that this distinction between the findings being improper and the findings of the Enquiry Officer being perverse is hair-line distinction and such distinction would be against the larger interest of the workmen. If the Labour Court finds that there was no evidence in support of the alleged misconduct or if the findings of the Enquiry Officer are against the evidence on record, then

> the only conclusion would be that the findings of the Enquiry Officer are perverse. In labour jurisprudence, the above technicalities and the fine distinction between the findings being improper and the findings being perverse would defeat the object of social welfare legislation and in the circumstances, without going into further details on this aspect of the case, we would only say that we do no agree with the impugned judgment of the learned Single judge dated 26th April 1988 as also with the findings of the Labour Court by way of Part II Award dated 8th February 1977 in Reference (IDA) No.304 of 1983."

15. The cases of *Firestone Tyre & Rubber Co. of India Pvt. Ltd (supra), E.Merck (I) Ltd., Bombay (supra)* and *Bhavani Metal Works (supra)* all arise out of the provisions of the Industrial Disputes Act. Section 11A has been interpreted by the Apex Court in case of *Firestone Tyre & Rubber Co. (supra).* The learned Single Judge of this Court in the case of *E.Merck (I) Ltd. (supra)* and *Bhavani Metal Works (supra),* has laid down the procedure to be adopted by the Labour Court or the Tribunal while deciding a Reference regarding illegal termination of services by way dismissal or discharge.

16. This Court in the case of *Municipal Corporation of Greater Bombay v/s. S.E. Phadtare (supra)* has already come to the conclusion that the powers of the Labour Court under section 11A of the Industrial Disputes Act are not analogous to the powers of the Labour Court exercised under section 78 of the BIR Act.

But this does not necessarily mean that the Labour Court cannot take a view different from the view taken by the Enquiry Officer on the same evidence led before the enquiry officer. If the Labour Court takes a different view in the matter on account of there being insufficient evidence, there is no need for the Labour Court to permit the employer to lead evidence afresh. The employer must be permitted to lead evidence afresh when there is no enquiry held or there is a defective enquiry, either because it is procedurally defective or because the findings of the enquiry officer are perverse. In the present case, the Labour Court was of the view that the findings could not be termed as perverse but the evidence was not sufficient to establish the case against the Petitioner. It was not a case where there was no evidence on record or evidence which could not be relied on and neither was it a case where the enquiry officer had misdirected himself while assessing the evidence and other material before him. The Labour Court merely found that the evidence was not sufficient to bring home the guilt against the workman concerned. As held in the case of *Babulal Nagar (supra),* the Labour Court is required under section 78 of the BIR Act to examine the legality of the order as well as its propriety. The Labour Court having come to the conclusion that the order was not perverse decided upon its legality. While considering the propriety of

the order the Labour Court found that the order was based on insufficient evidence and, therefore, has set it aside. The Industrial Court was wrong in observing that the Labour Court has only to determine whether the finding of the Enquiry officer is perverse and was not called upon to decide whether in its opinion the evidence was sufficient. While deciding upon the propriety of an order, it necessarily would mean that the Labour Court has to consider whether the conclusion drawn by the enquiry officer was proper and for this it will have to assess the sufficiency of evidence on which the enquiry officer bases its finding. Therefore, the order of the Industrial Court must be set aside. The order of the Labour Court is confirmed.

17. The submission made by Mr.Dharap, learned Counsel for the Petitioner, that the appeal itself was delayed is without any merit. A certified copy of the order of the Labour Court dated 26.8.1988 was received by the appellant that is the respondent herein on 18.10.1988. The appeal was filed on 17.11.1988. Obviously, therefore, the appeal was within the period of limitation. As held by this Court in the case of *Kalappa Narsappa Sangle (supra),* the limitation would start to run from the date of receipt of the certified copy of the order of the Labour Court. The appeal having been filed within the period of limitation, there

was no need to file an application for condoning the delay.

18. The order of the Industrial Court is set aside. The order of the Labour Court will have to be confirmed with certain modifications. The Labour Court has granted backwages from 20.3.1980 which obviously is an error because the date of discharge as reflected in the application filed before the Labour Court and in the Writ Petition is 23.9.1980. The order of the Labour Court is dated 26.8.1988 and that of the Industrial Court is of 26.7.1996. The present Writ Petition has been heard finally almost eight years after it was filed. In my view, the employer alone cannot be made to bear the brunt of gross delay in legal proceedings. Equities will have to be balanced. Therefore, although the Petitioner is entitled to reinstatement with continuity of service, backwages and other consequential benefits payable to him would be 50% of the amount due. The order of the Labour Court is modified to that extent.

19. Rule made absolute partly. No costs.

20. Parties to act on an authenticated copy of this order.